TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 274

GENERAL INVESTMENT COMPANY, APPELLANT,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

FILED FEBRUARY 11, 1925

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INDEX

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[fols. 1-3] [Caption omitted]

[fol. 4] **IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

In Equity. No. 1180

GENERAL INVESTMENT COMPANY, Plaintiff,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY, Defendant

BILL OF COMPLAINT—Filed June 20, 1924

To the Honorable the Judges of the District Court of the United States for the Northern District of Ohio, Eastern Division, sitting as a Court of Equity:

General Investment Company, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and a citizen and resident of the State of Maine, brings this, its bill of complaint, against The New York Central Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and of other States hereinafter named, and a citizen and resident of each of such states, and thereupon complains and respectfully represents, alleges and shows unto this Honorable Court as follows:

1. Plaintiff, General Investment Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and is a citizen and resident of said State, and has its principal office and place of business in the City of Portland, Maine.

2. Defendant, The New York Central Railroad Company, hereinafter, for the sake of brevity, sometimes called or referred to as the New York Central Company, is a consolidated railroad corporation, organized and existing under and by virtue of the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, is a citizen and resident of each of said States, and owns and operates a railroad in the County of Cuyahoga, Ohio, and other counties in the several states above mentioned, and has its principal [fol. 5] office and place of business within the State of Ohio, at the City of Cleveland and County of Cuyahoga, in said State.

3. Said defendant, The New York Central Railroad Company, was formed on or about December 22nd, 1914, under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, pursuant to a consolidation agreement, bearing date April 29, 1914, authorized by the respective boards of directors of the corporations parties thereto, between The New York Central & Hudson River Railroad Company, a corporation of New York, here-

inafter sometimes called or referred to as the Hudson River Company, and The Lake Shore and Michigan Southern Railway Company, a corporation of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, hereinafter sometimes called or referred to as the Lake Shore Company, and nine subsidiary companies controlled by said two first named consolidating companies. The said consolidation agreement, among other things, provided;

(a) That the new consolidated corporation should be called The New York Central Railroad Company;

(b) That its authorized capital stock should be $300,000,000, consisting of 3,000,000 shares of the par value of $100 each;

(c) That 2,495,904 6/10 shares should be issued in exchange for the outstanding capital stock of the consolidating corporations not held by The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company;

(d) That the holders of 2,255,810 2/3 shares of the capital stock of The New York Central & Hudson River Railroad Company should receive an equal number of shares of the consolidated corporation, and the holders of 47,069 shares of The Lake Shore & Michigan Southern Railway Company, being the minority stock held by persons other than The New York Central & Hudson River Railroad Company, should receive 235,345 shares of the capital stock of the consolidated company, in the ratio of 5 shares of new stock for 1 share of old stock.

4. At and before the time of the consolidation above referred to, on December 22nd, 1914, plaintiff was the owner of $30,000 par value of the capital stock of The New York Central & Hudson River [fol. 6] Railroad Company, which it acquired on or before February 24, 1914, and of 5 shares of the capital stock, of the par value of $100 each, of The Lake Shore and Michigan Southern Railway Company. As a result of said consolidation, the said shares were merged into the capital stock of the consolidated company, the defendant, The New York Central Railroad Company, against the written and oral protests of plaintiff made at the respective meetings of stockholders of The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company, held to consider and vote upon the question of approving the agreement for consolidation, and in face of the court proceedings instituted by plaintiff, hereinafter referred to.

The plaintiff is now and ever since a time prior to the date of said consolidation on December 22nd, 1914, has been the owner and holder of record of said shares of stock respectively issued by The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company, which said shares, by the terms of said consolidation agreement, now represent 325 shares, of the par value of $100 each, of the capital stock of the defendant.

5. At the time of said consolidation, December 22nd, 1914, and for many years prior thereto, The New York Central & Hudson River Railroad Company owned and operated a line of railroad from the City of New York, State of New York, along the east bank of the Hudson River to Albany, and thence west to the City of Buffalo, New York, and said Company also controlled and operated, through a long term lease and ownership of its entire capital stock, the railroad of the West Shore Railroad Company, extending from Weehawken, State of New Jersey, opposite the City of New York, along the west bank of the Hudson River to Albany and Schenectady, and thence west to Buffalo, in the State of New York; said two lines of railroad were and are closely parallel for the entire distance of about 440 miles, between New York City and Buffalo, New York.

Said Hudson River Company, at said times, also controlled and operated, through a long term lease, the railroad owned by the Boston & Albany Railroad Company, extending from Boston, Massa- [fol. 7] chusetts, to Rensselaer, New York, opposite Albany, with operating rights over the bridge to Albany, New York, a distance of about 200 miles, and said Hudson River Company also controlled and operated, under a long term lease, the road of the New York & Harlem Railroad Company, extending from New York City to Chatham, in the State of New York, a distance of about 127½ miles.

The said Hudson River Company, at said times, owned about 90 per cent of the capital stocks of both The Lake Shore and Michigan Southern Railway Company and the Michigan Central Railroad Company, which Companies, and their respective lines of railroad, are hereinafter more fully referred to.

The amounts of the then outstanding capital stocks of said Lake Shore and Michigan Central Companies and the amounts thereof then held by said Hudson River Company were as follows:

	Capital stock outstanding	Amount held by Hudson River Company
Lake Shore Company	$50,000,000	$45,289,200
Michigan Central	18,738,000	16,819,300

The Lake Shore and Michigan Southern Railway Company, at the times above referred to, owned, controlled and operated a line of railroad extending from the City of Buffalo, New York, to the City of Chicago, Illinois, passing through a large number of cities, towns and villages, including Dunkirk, New York; Erie, in Pennsylvania; Cleveland, Sandusky and Toledo, in Ohio; Goshen, Elkhart, South Bend, La Porte, Indian Harbor and Whiting, in the State of Indiana. Said Lake Shore Company also then owned, leased and operated various other lines, which will be hereinafter more fully referred to. The said Lake Shore Company, at the times mentioned, owned a controlling interest in the capital stocks of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, herein sometimes called the Big Four Company, and the Toledo & Ohio Central Railway Company, herein sometimes called the Ohio Central Company.

The amounts of the then outstanding capital stocks of said Big Four and Ohio Central Companies and the amounts thereof then held [fol. 8] by the Lake Shore Company were as follows:

	Capital stock outstanding	Amount held by Lake Shore Company
Big Four Company	$57,056,300	$30,207,700
Ohio Central Company	10,208,000	9,547,700

The Michigan Central Railroad Company, a corporation organized under the laws of the State of Michigan, at the time of the consolidation above referred to, owned or otherwise controlled, through stock ownership, leases and trackage rights, and then operated, and now so owns or otherwise controls and operates, a line of railroad extending from Buffalo, in the State of New York, to Detroit, Michigan, Toledo, Ohio, and Chicago, Illinois, and various other intermediate cities and towns, which will be hereinafter more fully referred to.

The said Big Four Company, a corporation organized under the laws of the States of Ohio and Indiana, then owned or otherwise controlled and operated, and now owns, controls and operates, a system of railroads in Ohio, Indiana, Illinois and Michigan, extending from Cleveland and Sandusky, on Lake Erie, with trackage rights also from Toledo, to the Cities of Columbus, Springfield, Dayton and Cincinnati, and other intermediate places in Ohio, and to Indianapolis, Muncie, Terre Haute and other cities and towns in Indiana, to Chicago, Peoria, Bloomington, Kankakee and other places in Illinois, and to St. Louis, Missouri, as hereinafter more fully referred to.

The Ohio Central Company, a corporation of Ohio, then owned, leased or otherwise controlled, and now owns, leases or otherwise controls, a system of railroads in Ohio, consisting principally of two separate lines running from Toledo, in said State, south and southeasterly to and through the Ohio coal fields, one by way of Findlay, Kenton and Columbus, to Thurston, and the other running by way of Fostoria, Bucyrus, Mt. Gilead and Delaware, to Thurston, and thence on the Gallipolis, Ohio, to Charleston and Swiss, in West Virginia.

The said Ohio Central Company also then owned and operated, and now owns and operates, a railroad extending from Peoria, Ohio, on its main line, to St. Mary's, Ohio.

[fol. 9] The Cincinnati Northern Company, a corporation of Ohio and Michigan, then owned, controlled and operated, and now owns, controls and operates, a line of railroad from Franklin, Ohio, (a point a few miles south of Dayton on the main line of the Big Four Company from Cincinnati to Cleveland) northwest, through the western part of Ohio and the Cities of Greenville, Celina and Bryan, in Ohio, to Jackson, Michigan. At various points the said line connects with other Big Four lines and with the lines of the New York Central and Michigan Central Companies, as hereinafter more fully set forth.

The outstanding capital stock of said Cincinnati Northern Railroad Company is now and in December, 1914, was $3,000,000, of which the said Big Four Company, in December, 1914, owned and it now owns $1,707,400.

6. The agreement of consolidation, pursuant to which the defendant, New York Central Company, was organized, on December 22nd, 1914, among other things, provided (Article XII) as follows:

"Upon the consummation of this consolidation, as provided by law, all and singular the rights, privileges, exemptions, franchises, property (real, personal and mixed), licenses, easements and interests of every kind, nature and description, belonging to or in any way appertaining to said consolidating corporations, and each of them, shall be vested in and be the property of said consolidated corporation, and it shall succeed to and there shall attach to it all of the debts, obligations, contracts, tariffs, and any and all liabilities of each of the consolidating corporations.

"The foregoing shall not be deemed to exclude any other effects, rights or privileges provided by law as incident to or resulting from any such consolidation and not herein specifically mentioned."

By virtue of said agreement and pursuant thereto, the defendant, New York Central Railroad Company, acquired, on December 22nd, 1914, has ever since held and now holds the $30,207,700 of the capital stock of the Big Four Company, $9,547,700 of the capital stock [fol. 10] of the Ohio Central Company, and which, prior to said date, had been held by said Lake Shore Company, and also, through its control of the Big Four Company, controls $1,707,400 of the capital stock of the Cincinnati Northern Company, and said defendant, on said date, also acquired, pursuant to said agreement, has ever since held and now holds, the $16,819,300 of the capital stock of the Michigan Central Company, which, prior to December 22nd, 1914, had been held by the New York Central & Hudson River Railroad Company.

By reason of such ownership of a majority of the capital stocks of the several companies, in this and paragraph numbered 5 referred to, the defendant, New York Central Company, now completely dominates and controls, and for nearly ten years past has dominated and controlled, the properties, affairs, business and operations of said Michigan Central Company, The Ohio Central Company and the Big Four Company and, through it, the Cincinnati Northern Company.

A majority of the directors of the defendant, New York Central Company, now constitutes, and for nearly ten years last past has constituted, a majority of the directors of said Big Four Company and Michigan Central Company, and the executive officers of both the two last mentioned Companies are and for said period have been substantially the same as the executive officers of said New York Central Company.

The executive officers of the Cincinnati Northern and Ohio Central Companies now and for nearly ten years last past have been the executive officers of the New York Central Company, and all of the directors of said Cincinnati Northern and Ohio Central Companies now are and during said time have been either directors of or representatives of, and dominated and controlled by, said New York Central Company.

7. The acquisition by the New York Central Railroad Company, in December, 1914, and its continued holding of the controlling interest in the capital stock of the Big Four Company, to wit: $30,207,700 of the common capital stock, and the acquisition by the said New York Central Company, in December, 1914, of $16,819,300, the same being about 90 per cent of the outstanding capital stock of the [fol. 11] Michigan Central Railroad Company, and the continued holding thereof, and the acquisition by said defendant, New York Central Company, in December, 1914, of $9,547,700—a controlling interest—of the capital stock of the Toledo and Ohio Central Railway Company and the continued holding thereof and the continued exercise of control and domination of said Big Four Company, the Michigan Central Company and the Ohio Central Company were and are in violation of the Federal Anti-Trust Acts, commonly known and referred to as the Sherman Act and the Clayton Act; and the same also were and are in violation of the constitutions and statutes of the States of Pennsylvania, Ohio, Illinois, Indiana and Michigan, and in violation of the common law and the public policies of said States as announced by various decisions of the Supreme Courts of said States, all as hereinafter set forth.

Lines of New York Central Company

8. The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated and which since said consolidation have been so owned, controlled and operated by defendant, New York Central Company, except the line of the Michigan Central and Big Four Companies hereinafter referred to, are principally as follows:

A main line from New York City, N. Y., and intermediate cities and towns, to Buffalo, New York; Erie, Pennsylvania, Ashtabula, Cleveland, Sandusky, Toledo and Byran, in Ohio; Auburn, Goshen, South Bend and Elkhart, in Indiana; and Chicago, Illinois. Said Company also leases under a long term lease, and operates the West Shore Railroad, extending from Weehawken, N. J., opposite the City of New York, to the City of Buffalo, New York.

A line of railroad extending from the City of New York to Chatham, in the State of New York, owned by The New York & Harlem Railroad Company, and leased for a long term of years to the New York Central Company.

A line of railroad extending from Albany, State of New York, to the City of Boston, Massachusetts, owned by The Boston & Albany Railroad Company, and leased for a long term of years to the New [fol. 12] York Central Company.

A line of railroad extending from Toledo, Ohio, through Monroe, Michigan, to Detroit, Michigan, running closely parallel to the Michigan Central line between the same Cities.

A line of railroad extending from Toledo, Ohio, to Jackson, Michigan.

A line of railroad extending from Monroe, Michigan, via Fort Wayne Junction, Michigan, to Lansing, Michigan, and from Fort

Wayne Junction, via Sturgis and White Pigeon, Michigan, to Elkhart, Indiana, where it connects with the main line extending from New York to Chicago.

A line extending from White Pigeon, Michigan, to Kalamazoo and Grand Rapids, Michigan. At Kalamazoo and Grand Rapids connection is made with the lines of the Michigan Central and other companies.

A line extending from South Bend, Indiana, through Kankakee, Illinois, to Zearing, Illinois.

A line extending from Chicago, Illinois, and Indiana Harbor, Indiana, southward through western Indiana to Danville, Illinois, connecting there with two lines of the Big Four Company.

A line extending from Fort Wayne, Indiana, through Auburn, Indiana, and Fort Wayne Junction, Michigan, to Jackson, Michigan. Said line at Fort Wayne connects with other roads running to the north, south, east, west, and at Jackson, Michigan, connects with the Michigan Central, Big Four and other lines.

East of Cleveland, Ohio, and Buffalo, New York, said New York Central Company likewise owns or otherwise controls various other lines in Ohio, Pennsylvania and New York, and reaching to Boston, Massachusetts.

The Ohio Central, controlled by the New York Central, has two lines from Toledo, Ohio, extending southeasterly to Thurston, Ohio, in the Ohio coal fields, one of which lines runs via Findlay, Kenton and Columbus, and the other via Berwick, Martel and Mt. Gilead. At Thurston, Ohio, the said two lines join and extend to Gallipolis, Ohio, Charleston and Swiss, in West Virginia.

New York Central Connections

The lines of the New York Central Railroad also form a very im- [fol. 13] portant link in the chain of railroads operating between the Atlantic and Pacific seaboards, the Canadian boundary and the Gulf of Mexico. Particularly is this so in the following respects:

At Chicago, Illinois, the New York Central, Michigan Central and Big Four lines connect wtih the various great trunk lines reaching Chicago from the Pacific Coast and all parts of the vast country west, northwest, south and southwest of Chicago, and each of said lines can and should compete for eastbound traffic passing through the Chicago gateway.

Traffic originating at or west and southwest of St. Louis and passing through that gateway, destined to the Atlanic Seaboard or intermediate points, such as Toledo, Cleveland and Columbus, in the State of Ohio, and Detroit, in Michigan; Buffalo, in New York; Pittsburgh, in Pennsylvania, and many other cities in each of said States, and also in the States of Virginia West Virginia and Maryland, may be taken at Chicago by the New York Central, Michigan Central or the Big Four Company, or at St. Louis by the Big Four, and delivered at its destination to points located on those roads, or on other roads with which said Big Four, Michigan Central or New York Central lines connect.

And the same is true as to traffic originating at or passing through the gateway of Atlantic ports and other eastern points, which is destined in the opposite direction.

Michigan Central

9. As hereinbefore alleged, the Michigan Central Railroad Company is under the complete domination and control of the New York Central Railroad, through its ownership of about 90 per cent. of Michigan Central stock and interlocking directors and officers.

The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated, and which since said consolidation have been so owned, controlled and operated, by the Michigan Central Railroad Company are principally as follows:

On the north side of Lake Erie, the main line extending from Buffalo, New York, to Detroit, Michigan, and from Detroit via Ypsilanti, Jackson, Battle Creek, Kalamazoo and Niles, Michigan, to Chicago, Illinois.

Another line from Jackson to Niles, Michigan, running south of [fol. 14] the main line above described.

A line extending from Kalamazoo to South Haven on Lake Michigan.

A line extending from Benton Harbor, Michigan, to South Bend, Indiana, where connection is made with the New York Central.

A line from Jackson, Michigan, on the Michigan Central main line, to Grand Rapids, Michigan, where connection is made with the New York Central and other lines.

A line from Jackson, Michigan, to Lansing, Saginaw, Bay City and Mackinaw City, in Michigan; and at Bay City said line connects with the Michigan Central line from Detroit northwards.

A line from Detroit, Michigan, to Toledo, Ohio, where connection is made with the New York Central, Big Four and the lines of other companies radiating from Toledo. Said line closely parallels the line of the New York Central between the same Cities.

The lines of the Michigan Company likewise constitute an important link in the chain of railroads operating between Atlantic and Pacific seaboard points, the Canadian boundary and the Gulf of Mexico.

From Buffalo and Niagara Falls, in the State of New York, the line of the Michigan Company extends through lower Canada to Detroit, Michigan, and thence to Chicago, Illinois. At Detroit connection is made with its own line extending to Mackinaw City, on the northern boundary of Michigan, and also with its own line from Detroit to Toledo, Ohio, running closely paralld with the New York Central line between the same points.

Both the Michigan Central and New York Central lines reach numerous other common points in the State of Michigan, among which are the following, viz: Monroe, Wyandotte, Ypsilanti, Jackson, Lansing, Grand Rapids, Kalamazoo, Niles and Benton Harbor, and also South Bend, in Indiana.

At Grand Rapids, Owosso and Detroit, in Michigan, the lines of the Michigan Company connect with those of the Grand Trunk Railway, which extend to Montreal and many Canadian points, as well [fol. 15] as Portland, in the State of Maine, and intermediate points.

At Buffalo, New York, the lines of the Michigan Company connect with the New York Central and four other trunk lines extending to the Atlantic seaboard, to wit: the Lehigh Valley, the Delaware, Lackawanna & Western, the Pennsylvania and the Erie Companies.

At Toledo, Ohio, connection is made with all the railroads of other companies centering at that point and extending with their connections throughout the States of Ohio, Indiana, Illinois and other states, to the south and west.

At Chicago, Illinois, connection is made with all the railroads of other companies centering at that point and extending throughout all the states, west, northwest, south and southwest of Chicago to the Pacific Coast, the Gulf of Mexico and the Canadian boundary.

Big Four Lines

10. The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated, and which since said consolidation have been so owned, controlled and operated by defendant, Big Four Company, are principally as follows:

Three Lines from Lake Erie Ports

One of these lines extends from Cleveland, Ohio, through Galion and Bellefontaine, and other cities and villages in Ohio; Union City, Muncie, Indianapolis and Terre Haute, and other cities and towns in Indiana; Paris, Mattoon, and other cities and towns in Illinois, to the City of St. Louis, Missouri; also from Cleveland, Ohio, via Galion and Delaware, to Columbus, Ohio; also from Cleveland, Ohio, via Galion, Delaware, Springfield, and various places in Ohio and Indiana, to Indianapolis, in said State; and at Springfield, Ohio, said line connects with the line from Columbus, Ohio, making a through line from Columbus, via Springfield, to Indianapolis, Indiana, where said line connects with the line first above mentioned running from Cleveland, Ohio, to St. Louis, Missouri; also from Cleveland, via Galion, Delaware, Springfield and Dayton, to Cincinnati, Ohio.

The second of said lines from Lake Erie extends from Sandusky, Ohio, through Tiffin, Bellefontaine, Springfield, Dayton, to Cincin- [fol. 16] nati, all in Ohio; said line connects at Bellefontaine, Ohio, with the main line extending from Cleveland, Ohio, via Indianapolis, Indiana, to St. Louis, Missouri, and at Springfield, Ohio, with the other line above described extending from Columbus, Ohio, to Indianapolis, Indiana, connecting there with the main line to St. Louis.

The third of said lines from Lake Erie extend from Toledo, Ohio, to Berwick, Ohio, where connection is made with the second line above mentioned and also with a line (leased by the New York Central Company) extending to a point near Galion, Ohio, where connec-

tion is made with the lines of the Big Four Company running to Cleveland, Columbus, Delaware, Springfield, Dayton and Cincinnati, in Ohio, and Indianapolis, Indiana, and St. Louis, Missouri.

In addition to the three lines above specifically described, said Big Four lines, owned, controlled and operated as aforesaid, comprise the following:

A line from the Ohio River at Cincinnati, Ohio, through Greensburg, Indianapolis and Lafayette, in Indiana, and Kankakee, Illinois, to Chicago, Illinois. At Indianapolis said line connects with the main line running to St. Louis, Missouri, and with the two Big Four lines extending east, one to Cleveland, Ohio, via Bellefontaine and Galion, and the other to Columbus, Ohio, via Springfield, Ohio, and from Springfield, via Delaware and Galion, Ohio, to Cleveland.

Another line extends from the Ohio River at Louisville, Kentucky, north through Greensburg, Anderson, Marion, Goshen and Elkhart, in Indiana, to Niles and Benton Harbor, Michigan. At Greensburg, Indiana, said line connects with the Big Four line from Cincinnati to Indianapolis, Indiana, and St. Louis, Missouri; also its two lines eastward, one to Columbus and one to Cleveland, Ohio, on which latter, at Bellefontaine, Ohio, connection is made with the other Big Four line extending from Sandusky, Ohio, through Tiffin, Springfield and Dayton, to Cincinnati and Columbus, Ohio.

Another Big Four line extends from Cairo, Illinois, on the Ohio River, northward through the eastern part of Illinois, via Danville and Kankakee, in said State, to Chicago, Illinois. At Paris, Dan-
[fol. 17] ville and Kankakee, in said State, said line connects with other Big Four lines,—at Kankakee with the New York Central, and at various points on said line from Cairo to Chicago connects with various lines of railroad operated by other companies.

Another Big Four line extends from Indianapolis, Indiana, through Danville and Bloomington, Illinois, to the City of Peoria, in said State. At Danville, Illinois, said line connects with the Big Four line extending from Cairo to Chicago, Illinois, with the lines of other railroad companies running to the north, south, east and west.

Another Big Four line—the Cincinnati Northern, controlled by the Big Four Company,—extends from Franklin, Ohio (a point a few miles south of Dayton, on the main line from Cincinnati to Cleveland), northward through the western part of Ohio and the Cities of Greenville, Celina and Bryan, in Ohio, to Jackson, Michigan. At various points the said line connects with other Big Four lines and with lines of the New York Central and Michigan Central Companies, as well as with the lines of other railroad companies crossing said Cincinnati Northern line.

Parallel and Naturally Competing Lines

11. Plaintiff further alleges that the lines of railroad respectively controlled and operated by the Big Four Company, the New York Central Company and the Michigan Central Company are, to a large extent, parallel and naturally competing lines for both interstate

and intrastate commerce, and that each and all of them are, and since December 22nd, 1914, have been, dominated and controlled by the New York Central Company, its directors and officers, and that each of said lines so controlled and dominated forms an important connecting link in the chain of trunk line railroads operated by various companies between the Atlantic and Pacific seaboards, the Canadian boundary and the Gulf of Mexico.

The lines of said three Companies can and should compete each with the other and, except for the domination and control above referred to, would so compete for all eastbound traffic originating at points west, northwest, south and southwest of Chicago, St. Louis [fol. 18] and Cincinnati, and destined for said cities and other points east, and to foreign countries. And a similar state of facts applies to traffic originating or passing through the gateway of New York, and other Atlantic ports and eastern railroad centers, destined in the opposite direction. That as to intrastate commerce, the said lines in the State of Ohio, Indiana, Michigan and Illinois, which are owned or controlled by the New York Central Company, are in a large part parallel and naturally competing lines with those owned, controlled and operated by the Big Four Company and the Michigan Central Company.

The two parallel lines of the Toledo and Ohio Central, controlled by the New York Central Company, are for intrastate traffic, natural competitors with each other, and also with the Big Four line extending from Columbus, Ohio, to Toledo, and other places in Ohio; and for interstate traffic, said Ohio Central lines are natural competitors with the Big Four line from Columbus, Ohio, and its connections to Detroit, and other places in Michigan; Goshen, Elkhart, South Bend, and other places in Indiana; Chicago, Illinois, and other cities and towns west and north of Chicago.

12. The acquisition, possession and ownership by the defendant, the New York Central Railroad Company, as hereinbefore alleged, of the controlling interests in the capital stocks of the Michigan Central, Big Four and Ohio Central Companies, and the control and domination of the policy, management, affairs, business, properties, operations and directorates of said railroads, and each of them, as hereinbefore set forth, were at the time or times thereof respectively, and they now are, in violation of the common law and the statutes of the United States, and the constitutions, statutes, common law and public policies of the several states through or into which they extend as aforesaid, to wit:

(a) In violation of an Act of Congress known as the Sherman Anti-Trust Act, approved July 2, 1890, being Chapter 647, Sec. 1, et seq., of the Compiled Statutes of 1890, and the acts amendatory thereof and supplementary thereto.

(b) In violation of an Act of Congress known as the Clayton Act, approved October 15, 1914, entitled: "An Act to Supplement Exist-[fol. 19] ing Laws Against Unlawful Restraints and Monopolies, and For Other Purposes."

(c) In violation of Section 9027 of the General Code of Ohio, which provides that a railroad company, formed by the consolidation of a company or companies of the State of Ohio with a company or companies of another state or states, may make a further consolidation with a company or companies of another state or states owning continuous connected, but not parallel or competing, lines.

(d) In violation of Sections 8806 to 8808, inclusive, of the General Code of Ohio, which prohibit the aiding or the leasing of, or other arrangements between such parallel or competing lines.

(e) In violation of Section 6391 of the General Code of Ohio, which prohibits combinations of capital by corporations in order to create or carry out restrictions in trade or commerce, or to prevent competition in transportation.

(f) In violation of Section 8683 of the General Code of Ohio, providing that a private corporation may purchase or otherwise acquire and hold shares of stock in other kindred, but not competing, private corporations, domestic or foreign, and providing further that this shall not authorize the formation of a trust or combination for the purpose of restricting trade or competition.

(g) In violation of Section 3866 of Burns' Annotated Statutes of Indiana, prohibiting every scheme, design, understanding, contract, combination or conspiracy in restraint of trade.

(h) In violation of Section 3867 of Burns' Annotated Statutes of Indiana, providing that every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce within the State of Indiana, shall be punishable by fine, or by fine and imprisonment.

(i) In violation of Sections 5339, 5339a, 5343b and 5220e of Burns' Annotated Statutes of Indiana, which forbid any railroad company to purchase or lease, in whole or in part, any competing line of railroad in the State of Indiana, or any other state.

(j) In violation of the common law and public policy of the State of Indiana, prohibiting monopolies as announced by the decisions [fol. 20] of the Supreme Court of that State as follows:

Eel River R. Co. vs. States, 155 Ind. 433.
Indiana Union R. Co. vs. Dohn, 153 Ind. 10.
Indiana vs. Portland Gas Company, 153 Ind. 483.
Board vs. Lafayette R. R. Co., 50 Ind. 85.
Chicago and I. and L. Ry. Co. vs. Southern Ind. Ry. Co., 38 Ind. App. 234
Cleveland, Etc. R. R. Co. vs. Closser, 126 Ind. 348.

(k) In violation of Article XI, Section 11, of the Constitution of the State of Illinois, which provides that no railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line.

(l) In violation of Section 23, of Chapter 114, of Smith's Illinois Revised Statutes, which provides that no railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line.

(m) In violation of the common law and public policy of the State of Illinois against monopolies as defined by decisions of the Supreme Court of the State in the following cases among others:

Harding vs. American Glucose Company, 182 Ill. 551.
Chicago, Etc. Coal Company vs. People, 214 Ill. 421.
Dunbar vs. American Telegraph Company, 224 Ill. 9.
Ford vs. Chicago Milk Shippers' Association, 115 Ill. 166.
People vs. Butler St. Foundry, 201, Ill. 236.
Sanford vs. People, 121 Ill. App. 619.

(n) In violation of Section 8, of Article XII, of the Constitution of the State of Michigan, which provides that no railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a parallel or competing line.

(o) In violation of Section (8263) of the Compiled Laws of Michigan, which provides that no railroad companies owning parallel or competing lines shall be permitted to consolidate themselves into one corporation.

(p) In violation of Section- (15013) to (15026) and (15033) to (15039) of the Compiled Laws of Michigan, prohibiting agreements, contracts and combinations in restraint of trade or commerce, and prohibiting trusts and monopolies which restrain competition in transportation.

(q) In violation of Section 4, Article XVII, of the Constitution of the State of Pennsylvania, which provides that no railroad corporation shall consolidate the stock, property or franchises of [fol. 21] such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad corporation owning, or having under its control, a parallel or competing line, and that no officer of such railroad corporation shall act as an officer of any other railroad corporation owning, or having the control of, a parallel or competing line.

(r) In violation of the Public Laws of 1901 of the State of Pennsylvania, page 349, No. 216; Public Laws of 1865, page 19, No. 35; Public Laws of 907, No. 254, prohibiting monopolies by carriers and the common control of parallel or competing lines.

All of the foregoing provisions of State and Federal laws, statutes and constitutions are now in full force and effect, and were in force and effect at the time of all matters and things herein complained of.

Plaintiff further avers that the constitutions, statutes, common law and public policy of the several states as hereinbefore cited, wherein the New York Central Railroad Company is incorporated, were and are part and parcel of the contract generally existing be-

tween and among the said defendant corporation, its stockholders, including plaintiff, and the state or states under the laws of which said defendant corporation was organized and now exists.

13. Plaintiff alleges that, by reason of the facts and the principles and provisions of law hereinbefore cited that are applicable thereto, the said defendant, The New York Central Company, was organized for the illegal purpose of establishing, and did and does constitute, an unlawful combination in restraint of interstate and intrastate trade and commerce, and the suppression of the competition in transportation of passengers and goods, to the injury of all its stockholders, including this plaintiff; and said defendant's conduct will, if its continuance of the unlawful control and domination or management of said parallel and normally and potentially competing lines of railroad is not frustrated by a decree of this court, render its charter subject to forfeiture in some or all of the several states aforesaid, through or into which its lines extend, and under the laws of which it was and is incorporated, and will subject said de- [fol. 22] fendant to the pains and penalties of the Sherman Anti-Trust Act, the Clayton Act, and of the various provisions of state constitutions and statutes hereinbefore cited. All of which, unless restrained and permanently enjoined by order and decree of this court, will work great and irreparable injury and damage to the defendant and its stockholders, including the plaintiff, for the redress of which the plaintiff has and will have no adequate remedy at law.

14. Plaintiff alleges that it was a shareholder of the defendant Company at the time of the transactions of which complaint is herein made, and that it brings this suit on behalf of itself and of all other stockholders of the defendant Company similarly situated, and who may choose to come in and contribute to the expense of this suit upon such terms as this Honorable Court may impose.

15. It is useless and futile to demand of the persons acting as directors and officers of the defendant Company that they discontinue their illegal practices herein complained of, and that they cause said defendant Company to divest itself of the ownership of the controlling interest in each and all of said parallel and normally and potentially competing lines of railroad; that this plaintiff has, by means of its former suit, hereinafter described, and by protest and objections made at meetings of the stockholders of said Hudson River and Lake Shore Companies, and to the directors thereof, and otherwise, vainly sought to prevent and correct the illegal acts and conduct herein complained of.

16. Plaintiff further shows and alleges that the matter in controversy herein, as shown in the foregoing allegations, exceeds, exclusive of interest and costs, the sum or value of $3,000, and is between citizens of different states, to wit: between plaintiff, a citizen of Maine and of no other state, and the defendant, which is a citizen of each of the States of New York, Pennsylvania, Ohio, Indiana,

Illinois and Michigan, and no other. And this suit is one of a civil nature in equity, whereof this court properly has jurisdiction under the acts of Congress in such case made and provided; and this suit is not a collusive one, to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. The suit arises under the Constitution and laws of the United [fol. 23] States regulating commerce and to protect trade and commence against restraint and monopolies, and also arises under the constitutions and laws of the States of Ohio, Pennsylvania, Indiana, Illinois and Michigan.

17. On the 8th day of December, 1914, the plaintiff herein filed in the Common Please Court of Cuyahoga County, Ohio, its petition or bill of complaint against The Lake Shore and Michigan Southern Railway Company and the New York Central and Hudson River Railroad Company, et al., for an injunction restraining and preventing the then proposed consolidation of said railroad companies and nine of their subsidiary companies under the said agreement dated April 29, 1914, executed by the directors of the eleven companies to be consolidated as hereinbefore referred to, unless and until said New York Central and Hudson River Railroad and The Lake Shore and Michigan Southern Railway Companies should divest themselves of the controlling interests respectively held by them in the capital stocks of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, known as the Big Four; The New York, Chicago and St. Louis Railroad Company, known as the Nickel Plate; The Michigan Central Railroad Company, The Toledo and Ohio Central Railway Company, The Lake Erie and Western Railroad Company and Western Transit Company, some of which stocks the defendant claims to have since disposed of, to wit: those of the Nickel Plate, Lake Erie and Western and Western Transit Companies, and praying also that if, pending said action, such consolidation should be effected, the same be set aside, and for substantially the relief hereinafter prayed for. The plaintiff here, by its said petition or bill of complaint so filed in said State Court, charged among other things that the various lines of railroad, which are hereinbefore alleged to be parallel and potentially competing lines engaged in interstate and intrastate commerce, were likewise at that time also parallel and potentially competing lines and similarly engaged; said bill further charged that the intercorporate control and domination or management of said lines, which is hereinbefore alleged to be exercised by the defendant, was, at the time of the filing of said former bill, threatened to be vested in and exercised by said proposed consolidated corporation, defendant herein; and [fol. 24] said former bill also charged that said threatened control and domination or management by said consolidated corporation would be in violation of the same laws, namely, the Sherman Anti-Trust Act, the Clayton Act, and the various constitutions, statutes, common law and public policies of the several states through or into which said lines extend, as the acts and conduct of the defend-

ant, which are hereinbefore complained of are alleged herein to violate.

Pending said former suit in said Court of Common Pleas said consolidation was effected and consummated, and thereafter, on January 8, 1915, said defendants therein, The Lake Shore and Michigan Southern Railway Company and The New York Central and Hudson River Railroad Company, and said consolidated corporation, The New York Central Railroad Company, defendant herein, filed in said Court their petition for removal of said cause to the United States District Court for the Northern District of Ohio, Eastern Division, whereupon such proceedings in said cause were had in the said District Court, and on reviews thereof in the Circuit Court of Appeals for the Sixth Circuit and in the Supreme Court of the United States, that said petition or bill of complaint was finally dismissed for want of jurisdiction, because, as to the New York Central and Hudson River Railroad Company, there was no lawful service of summons upon it, and because as to all defendants, the suit was not brought originally in the proper court of the United States instead of in the said State Court; but such dismissal was expressly qualified by the judgment and decree of the Supreme Court of the United States, which provided that, whereas said Circuit Court of Appeals had qualified the dismissal by making it without prejudice as to all parts of the bill, save one, namely, so much of the bill as based the right to relief on asserted violations of the Sherman Anti-Trust Act and the Clayton Act, such dismissal should have been, and was by the Supreme Court of its own motion, ordered to be without prejudice as to that part also. This action is, therefore, brought pursuant to the leave so especially granted, sua sponte, by the Supreme Court of the United States.

Plaintiff has no full, complete and adequate remedy at law and, [ofl. 25] therefore, prays for relief in this court of equity as follows:

(1) That the defendant appear and answer this bill of complaint, but not under oath, its answer under oath being hereby expressly waived.

(2) That the domination and control by the defendant, The New York Central Railroad Company, over the properties, affairs, business, management, operations and directorates of the Michigan Central Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Cincinnati Northern Railroad Company and The Toledo and Ohio Central Railway Company, and the acquisition of controlling interests in the capital stocks of said Companies, as aforesaid, be declared and decreed to be ultra vires, illegal and void, and in violation of the constitutional and statutory provisions and of the common law and public policies, both state and federal, as hereinbefore set forth, and in violation of the rights and to the injury and damage of the shareholders of said defendant, including this plaintiff;

(3) And that said defendant, The New York Central Railroad Company, may be restrained and perpetually enjoined from dominating or controlling the other railroad companies above mentioned,

their affairs, property, business, operations, management and directorates, either directly or indirectly;

(4) That the defendant, The New York Central Railroad Company, its officers, agents, directors, proxies and attorneys, and each and every of them, be enjoined from voting, or causing to be voted, at any meeting of stockholders, the stocks of The Michigan Central Railroad Company, Big Four and Ohio Central, or of any of them, acquired and held by The New York Central as aforesaid, and also the stock of The Cincinnati Northern Company, acquired and held by the Big Four Company as aforesaid;

(5) That an injunction may be issued restraining The New York Central Company from permitting its directors and officers from serving as directors, officers or agents of the Michigan Central, Big Four, Ohio Central and Cincinnati Northern Companies, or of any of them;

(6) That pending this suit separate receivers be appointed to [fol. 26] take charge and possession of the shares of the capital stocks of the Michigan Central, Big Four and Ohio Central Companies, now owned as aforesaid by the defendant, The New York Central Railroad Company, and that upon final hearing that the defendant, The New York Central Railroad Company, be ordered and required to sell and dispose of all of the shares of stock owned or claimed to be owned by it in said Michigan Central, Big Four and Ohio Central Companies, in such manner and to such persons and corporations as have no interests allied with or controlled by said defendant, The New York Central Railroad Company, or any of its subsidiary or controlled companies, but to such persons and corporations as will manage and operate said Michigan Central, Big Four and Ohio Central Companies as independent corporations, free from the domination and control of said defendant, The New York Central Railroad Company, or any of its allied interests or corporations;

(7) Plaintiff prays that a temporary restraining order may be issued granting the plaintiff the injunctive relief above set forth, pendente lite; that upon final hearing such restraining order may be made perpetual; and the plaintiff may be granted the farther and other relief to which it may be entitled in equity and good conscience;

(8) Plaintiff prays for the following process:

(a) The writ of subpœna issued out of and under the seal of this Court, directed to said defendant, The New York Central Railroad Company, requiring it to appear and answer this bill of complaint and to stand to and abide by the orders and decree of the Court herein.

(b) The writ of injunction issued out of and under the seal of this Court, directed to said defendant, restraining it during the pendency of this suit, as above prayed.

And plaintiff will ever pray, etc.

The General Investment Company, by Clarence H. Venner, President. Synder, Henry, Thomsen, Ford & Seagrave, by Frederick A. Henry, Attorneys for Plaintiff, 914 Williamson Building, Cleveland, Ohio.

[fol. 27] Sworn to by Clarence H. Venner. Jurat omitted in printing.

[fol. 28] In United States District Court

Subpœna and Marshal's Return—Filed July 5, 1924

The United States of America,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting

You are hereby commanded to summon the New York Central Railroad Company, citizen of and resident of the State of Ohio, if it be found in your District, to be and appear in the District Court of the United States for the Northern District of Ohio, aforesaid, at Cleveland, on or before the twentieth day after service, excluding the day thereof, to answer a certain Bill in Equity, filed and exhibited in said Court, against it by General Investment Company, citizen of and resident in the State of Maine.

Hereof it is not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable John M. Killits and the Honorable D. C. Westenhaver and the Honorable Paul Jones, District Judges of the United States, this 20th day of June, A. D. 1924, and in the 148th year of the Independence of the United States of America.

B. C. Miller, Clerk, by C. A. Wilder, Deputy Clerk. (Seal.)

Memorandum

The said defendant is required to file its answer or other defense in the Clerk's Office on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro-confesso.

B. C. Miller, Clerk.

[Endorsed:] 23/421. No. 1180. U. S. Marshal's No. 14227. United States District Court, Northern District of Ohio. General Investment Company vs. The New York Central Railroad Co. Subpœna in Equity. Return day July 10, 1924. $25.00 deposited by plaintiff for costs. Snyder, Henry, Thomsen, Ford & Seagraves, Complainant's Attorney.

U. S. Marshal's Return

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Received this writ at Cleveland, Ohio, June 20, 1924, and on the same day, at the same place, I served the within named The New York Central R. R. Co. by handing to F. L. Long, Agent of said N. Y. C. R. R. Co. personally a true and certified — hereof, with all endorsements thereon The President, Secy. Treas. or other chief officer could not be found in my district.

Geo. A. Stauffer, U. S. Marshal. A. L. Gibson, Deputy.

Marshal's Fees:

Travel	6
Service	2.00
	2.06

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF DEFENDANT TO DISMISS—Filed July 3, 1924

Now comes the defendant and moves the Court as follows:

1. To dismiss the bill of complaint for the following several reasons:

(a) For want of equity;

(b) Because of the laches and delay of the plaintiff, which is not excused by the matter set up in Par. 17;

(c) The Court is without jurisdiction of the subject matter;

(d) The plaintiff has no right or standing to maintain this suit;

(e) Said bill of complaint fails to state facts which entitle the plaintiff to any of the relief therein demanded.

2. To dismiss so much of said bill of complaint as seeks injunctive relief on the ground of the defendant's alleged violations of the so-called Sherman Act and Clayton Act (and the parts of the bill relating to such matters) for the following reasons:

(a) Plaintiff has no standing to maintain a suit based upon such violations;

(b) The bill does not show any threatened loss or damage sustained by plaintiff by violation of said laws;

(c) As appears from the bill, said alleged violations are claimed to have occurred in respect of matters subject to the regulation, supervision and jurisdiction of the Interstate Commerce Commission.

3. To dismiss so much of said bill of complaint as seeks injunctive relief against the defendant because of its acquisition of the majority of the stock of said Big Four, Michigan Central, Ohio Central and Cincinnati Northern Companies, and the alleged domina-[fol. 30] tion and control resulting from such acquisition and the holding of such stock (with the parts of said bill relating to said matters) because the Court is without jurisdiction to entertain this suit or grant relief upon such grounds.

4. To dismiss so much of said bill of complaint as seeks relief against the defendant for alleged violations of state constitutions or statutes, or the common law (with the portions of said bill relating to said matters) on the following several grounds:

(a) The bill fails to state facts sufficient to constitute or show such violations;

(b) The federal remedies and procedure provided by the Interstate Commerce Act and the Clayton Anti-Trust Act in respect of interstate commerce, are exclusive of injunctive relief on account of the alleged monopolistic control, combinations and consolidations in restraint of intrastate commerce, therein claimed to be in violation of said state statutes, constitutions and common law.

West, Lamb & Westenhaver, Attorneys for Defendant. S. H. West, of Counsel.

July 2, 1924.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION ON MOTION TO DISMISS—Filed Oct. 24, 1924

This cause is before me on defendant's motion to dismiss. The controversy here involves the same facts as were considered in General Investment Company v. Lake Shore & Michigan Southern Ry. Co., (6 C. C. A.) 269 Fed. 236; same case on appeal, 260 U. S. 261. The threatened consolidation, which it was sought in that litigation to prevent, is now averred to have been completed and to produce an illegal combination in restraint both of interstate and of intra-state commerce, and to be in violation both of the Sherman Anti-Trust Act, as amended by the Clayton Act, and the local law of Ohio and certain other states. As I read the bill in this case, all other grounds upon which relief was sought in the former litigation are now eliminated.

The motion to dismiss will be sustained. It is settled that a private party may not maintain a bill in equity to enjoin or dissolve an

illegal trust created or maintained in violation of the Sherman Anti-Trust Law, and this is true whether the suit is brought by a stranger to the combination or by a stockholder of a corporation party thereto. General Investment Co. v. Lake Shore & Mich. Southern Ry. Co., 269 Fed. 236; same case on appeal, 260 U. S. 261, 286; Paine Lumber Co. v. Neal, 244 U. S. 459. Congress has also assumed control of the subject matter of stock ownership in parallel or competing railroad carriers engaged in interstate commerce. Act of Oct. 15, 1914, known as the Clayton Act, Secs. 7, 8, 11 and 16 (U. S. Comp. Stat. 1918, Secs. 8835g, 8835h, 8835j and 8835o). It has also assumed jurisdiction of and legislated [fol. 32] upon the subject matter of the consolidation of railroad carriers doing an interstate business. Sec. 5, Interstate Commerce Act, as amended by Sec. 407, Transportation Act, 1920 (U. S. Comp. Stat. 1923, Sec. 8567); United States v. Southern Pacific R. R. Co. (8 C. C. A.) 290 Fed. 443. This being so, upon the allegations of plaintiff's bill, the alleged combination in restraint of intra-state commerce is so inextricably interwoven with the restraint of interstate commerce that it is impossible to render a judgment with respect thereto without at the same time adjudging as to the combination in restraint of interstate commerce. So to do would be indirectly permitting a private party to do that which it is forbidden to do directly. Hence it follows that the rights of the plaintiff, if any, so far as the same rest upon alleged combinations in violation of state or local law, are dominated by the Federal law. That Congress has so intended, so far as railroad carriers engaged in interstate trade are concerned, no matter by what state they may have been chartered, is obvious, and it seems to me no doubt can be entertained as to the constitutional power of Congress so to legislate. In this aspect, the principles of law announced and applied in the following cases are controlling: Louisville & Nashville R. R. Co. v. Mottley, 219 U. S. 467; Houston & Texas Ry. Co. v. United States, 234 U. S. 343; American Express Co. v. Caldwell, 244 U. S. 617; Illinois Central R. R. Co. v. Public Utilities Com'n, 245 U. S. 493; Railroad Commission of Wisconsin v. Chicago, Burlington & Quicy R. R. Co., 257 U. S. 563.

D. C. Westenhaver, Judge.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING BILL OF COMPLAINT—Nov. 7, 1924

This day came the parties by thir attorneys and this cause came on to be heard on the motion of the defendant to dismiss the bill of complaint for the reasons in said motion stated, and was argued by counsel. On consideration whereof and the Court being fully advised, said motion is hereby allowed and said bill of complaint

is dismissed at the plaintiff's costs, to all of which the plaintiff then excepted.

O. K. 11/6/24. Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave. S. H. West.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Dec. 5, 1924

The above named plaintiff, General Investment Company, conceiving itself aggrieved by the final decree made and entered on the 6th day of November, 1924, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, Solicitors for Plaintiff.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 5, 1924

And now, upon the 5th day of December, A. D. 1924, comes the said complainant, General Investment Company, by its solicitor, Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, and in connection with its petition for appeal says that the final decree in said cause is erroneous and against the just rights of said complainant, for the following reason, namely:

The Court erred in sustaining the motion of the defendant, The New York Central Railroad Company, to dismiss the bill of complaint and in ordering that the cause be dismissed accordingly.

Wherefore, the said appellant, General Investment Company, prays that the said decree of the District Court of the United States for the Northern District of Ohio, Eastern Division, be reversed, and that such directions be given and decree made in respect to the matters herein referred to in favor of this complainant as will revoke

said dismissal for want of jurisdiction, and require said cause to be heard upon its merit, with costs to be taxed.

General Investment Company, by Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, Solicitors for Plaintiff.

[fol. 36] In United States District Court

[Title omitted]

Order Allowing Appeal—Dec. 5, 1924

On petition of the complainant, General Investment Company, by Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, its solicitors:

It is ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein on the 6th day of November, 1924, be and the same hereby is allowed, and that a certified transcript of the record, in accordance with the rules and practice for the courts of equity of the United States, as promulgated by the Supreme Court of the United States November 4, 1912, forthwith be transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed in the sum of Five Hundred Dollars.

[fol. 37] Bond on Appeal for $500—Approved; omitted in printing

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[fol. 38] Citation—In usual form, showing service on S. H. West; omitted in printing

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[fol. 39] In United States District Court

[Title omitted]

Certificate of District Judge Certifying the Question of Jurisdiction—Filed Dec. 5, 1924

Be it remembered that on the 6th day of November, 1924, this cause came on to be heard upon the motion of the defendant, The New York Central Railroad Company, to dismiss the said suit on the ground that the District Court of the United States for the Northern District of Ohio, Eastern Division, had no jurisdiction as a Federal Court over the subject matter of the cause, and the Court, upon due

consideration of said motion and after hearing the arguments of counsel, sustained the same on the sole ground that this Court had no jurisdiction of the said cause as a Federal Court and accordingly directed that a decree be made and entered herein dismissing said suit for want of jurisdiction, and this ruling of the Court is hereby certified to the Supreme Court of the United States.

I further certify that the matter in controversy herein, as shown by the record, exceeds in value Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

Dated this 5th day of December, 1924.

D. C. Westenhaver, Judge of the United States District Court for the Northern District of Ohio, Eastern Division.

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Jan. 5, 1925

On application of plaintiff and for good cause shown, it is ordered that the time for filing the transcript of record in the Supreme Court of the United States be extended to February 5, 1925.

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 5, 1924

To the Clerk:

You are requested to take a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to wit:

Bill of Complaint;
Writ of Subpœna and Marshal's Return of Service thereof;
Defendant's Motion to Dismiss Bill;
Memorandum Opinion Granting Motion to Dismiss;
Journal Entry of Decree of Dismissal;
Petition for Appeal;
Assignment of Errors;
Order allowing appeal;
Bond on Appeal;
Certificate of the District Judge Certifying the question of Jurisdiction;

Citation;
Order extending time for filing transcript of record;
Præcipe for Transcript.

You will please certify the foregoing, to be printed in accordance with the rules of the Supreme Court of the United States.

Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, Solicitors for Appellant.

We acknowledge service of the foregoing præcipe by copy this 5th day of December, 1924.

The New York Central Railroad Company, by Saml. H. West.

[fol. 42] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

NORTHERN DISTRICT OF OHIO, ss:

I, B. C. Miller, Clerk of the United States District Court within and for said District, do hereby certify that the foregoing pages contain a full, true and complete copy of the record and all proceedings in this cause, including the petition for appeal, assignment of errors, order allowing appeal and the bond on appeal, in accordance with the precipe for transcript filed herein, the originals of which remain in my custody as Clerk of said Court.

There is also attached to and transmitted herewith the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court, at Cleveland, in said District, this 4th day of February, A. D. 1925, and in the 149th year of the Independence of the United States of America.

B. C. Miller, Clerk, by T. J. Denzler, Deputy Clerk. (Seal of the District Court, Northern District of Ohio.)

Endorsed on cover: File No. 30,864. N. Ohio D. C. U. S. Term No. 274. General Investment Company, appellant, vs. The New York Central Railroad Company. Filed February 11th, 1925. File No. 30,864.

In the Supreme Court of the United States

OCTOBER TERM, 1925.

No. 274.

GENERAL INVESTMENT COMPANY, *Appellant*,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

SNYDER, HENRY, THOMSEN, FORD & SEAGRAVE,
914 Williamson Building, Cleveland, Ohio,
Solicitors for Appellant.

FREDERICK A. HENRY,
Of Counsel.

(30,864)

In the Supreme Court of the United States

October Term, 1925.

No. 274.

General Investment Company, *Appellant,*

vs.

The New York Central Railroad Company.

Appeal from the District Court of the United States
For the Northern District of Ohio.

BRIEF FOR APPELLANT.

Snyder, Henry, Thomsen, Ford & Seagrave,
914 Williamson Building, Cleveland, Ohio,
Solicitors for Appellant.

Frederick A. Henry,
Of Counsel.

(30,864)

INDEX.

Cases and Authorities Cited.

In the Supreme Court of the United States

OCTOBER TERM, 1925.
No. 274.

GENERAL INVESTMENT COMPANY, *Appellant*,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

STATEMENT.

This case is a sequel to that of *General Investment Company v. Lake Shore and Michigan Southern Railway Company, et al.*, 260 U. S., 261. (R. 15, 16.)

The threatened illegal consolidation of various lines of railroad into The New York Central Railroad Company, which the former suit sought to enjoin, was in form consummated during its pendency. That suit was commenced in a State court, and, for that reason, (p. 288) "so much of the bill as based the right to relief on asserted violations of the Sherman Anti-Trust Act and the Clayton Act was rightly dismissed; but the dismissal, being for want of jurisdiction, should have been without prejudice." In answer to the further question presented by the record in that suit, "Did the bill show a right to relief in equity because of infractions of State constitutions and laws?" this Court held that, under the circumstances disclosed by the bill, the plaintiff failed (pp. 289, 290) "to point out with precision and certainty in what respects the law is about to be vio-

lated and to show clearly and positively, substantial and irreparable injury to its private rights." The dismissal of that suit was thereupon qualified so as to be (pp. 289, 290) "without prejudice as to *all* parts of the bill."

The present suit, was originally commenced in the District Court for the Northern District of Ohio, Eastern Division, and the bill alleges (R. 15, 16) the relation of the present to the former suit; points out with precision and certainty the violations of the Sherman Anti-Trust Act, the Clayton Act and various State constitutions and laws (R. 11 to 13); and shows the plaintiff's interest as a minority stockholder in the New York Central and Lake Shore Companies, and the irreparable injury and damage to its private rights from the proposed consolidation, and to the rights of the other minority stockholders, in whose behalf also it sues. Paragraphs 4, 13 and 14 of the bill (R. 2, 14).

On motion of the defendant the present suit was dismissed for want of jurisdiction. On certificate of the district judge the plaintiff brings this direct appeal.

ARGUMENT.

This Court ruled in the former case (260 U. S., 261, 288), "that so much of the bill as based the right to relief on asserted violations of the Sherman Anti-Trust Act and the Clayton Act, was rightly dismissed; but the dismissal, being for want of jurisdiction, should have been without prejudice." The fact that the suit was brought in a State court was the sole ground of dismissal (R. 286, 287). At p. 287 the opinion quotes the proviso of the sixteenth section of the Clayton Act, (38 Stat. L., 730); but the "without prejudice" implies a refusal to construe said proviso in such manner as to exempt a railroad carrier engaged in interstate commerce from being sued under favor of said section by a minority stockholder for injunctive relief "in

respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission," as conferred afterwards upon the Commission in the amendment to the Interstate Commerce Act which was added in 1920 by the Transportation Act (Sec. 5, (6), 41 Stat. L., 480).

When the Clayton Act was passed, the Interstate Commerce Commission had no jurisdiction of railroad consolidations. *Cf., In re Heath*, 144 U. S., 92, 94, wherein, with reference to the construction of a jurisdictional statute which adopts provisions of another statute, it is said, "And such adoption has always been considered as referring to the law existing at the time of adoption; and no subsequent legislation has ever been supposed to affect it." And see 25 *Ruling Case Law*, p. 908, Sec. 160. Compare also, with reference to the independent basis of equitable jurisdiction whereby stockholders' suits are maintainable to enjoin *ultra vires* and unlawful acts threatened by their own corporations, notwithstanding a statutory prohibition of direct suits for similar injunctive relief, *Brushaber v. Union Pacific R. R.*, 240 U. S., 1, 10; *Stanton v. Baltic*, 240 U. S., 103; *Pollock v. Farmer's Loan and Trust Co.*, 157 U. S. 429; *Dodge v. Wolsey*, 59 U. S., 331.

In the present complainant's former suit, *General Investment Co. v. Lake Shore and Michigan Southern Railway Company, supra*, (260 U. S., 261, 285, 286) service on The New York Central and Hudson River Railroad Company was quashed because that company was not domiciled within the district; but the court denied the contention that, as to its co-defendant, the Lake Shore Company, it was an indispensable party or that "its participation in the agreement for the consolidation gave it any right which required that it be brought in. At best the agreement was not to be effective unless and until ratified by the stockholders

of the several companies. It had not been ratified by the stockholders of the Lake Shore Company, and they were under no obligation to ratify it."

The complainant's Lake Shore stock consisted of five shares acquired before the stockholders adopted the agreement but after the directors had voted upon it. More than nine-tenths of the Lake Shore Company's capital stock was owned by the New York Central and Hudson River Railroad Company, and in the latter company the complainant was interested as a shareholder to the extent of $30,000 par value of its stock, all of which had been acquired by it before either company had taken any action whatever looking to consolidation.

In these circumstances this Court held (p. 285) that "As to so much of the bill as sought to enjoin the New York Central [and Hudson River Railroad] Company from voting its shares in the Lake Shore Company and to enjoin the latter from permitting it to vote them, we think it is obvious that the New York Central Company was an indispensable party, and that with it neither appearing nor reached by any effective process, no other course was open than to dismiss that part of the bill."

The amount and the time of acquisition of the shares of the plaintiff, when viewed merely as a Lake Shore stockholder in the suit as thus narrowed, though no bar to its maintenance generally, were held to be not without weight in adjudicating matters discretionary or doubtful (pp. 282, 289). As upholding the right of a stockholder in such circumstances to sue, see *Dickerman v. Northern Trust Company*, 176 U. S., 181, 192; *Bloxam v. Met. Ry.*, L. R. 3 Ch. App., 337; *Seaton v. Grant*, L. R., 2 Ch. App., 459; *Elkins v. Camden & Atlantic R. R.*, 36 N. J. Eq., 5; *S. Dakota v. N. Carolina*, 192 U. S., 286, 311; *Blair v. Chicago*, 201 U. S., 400, 448; *Williamson v. Osenton*, 223 U. S., 619, 625; *3 Cook*

on Corporations, 7th Ed., Secs. 736 & 737; and note 2, p. 2681; *Forrester v. B. & M. Consol. Copper & Silver M. Co.*, 21 Mont., 544; *Venner v. Pa. Steel Co. of N. J.*, 233 Fed., 407. But in the present case, the complainant properly bases its right to sue upon its shareholdings in both of these old companies; and in these circumstances its interest, though unchanged, can not now be deemed either untimely or inconsiderable. Pars. 4, 5 and 14 of the bill (R. 2, 3, 14).

Section 16 of the Clayton Act (38 Stat. L., 737) opens the door to private suit for injunction "against threatened loss or damage by a violation of the Anti-Trust laws, including Sections 2, 3, 7 and 8 of this act," etc. Sec. 1 of the Sherman Anti-Trust Act (26 Stat. L., 209) provides that "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Section 7 of the Clayton Act (38 Stat. L., 731) forbids particularly the acquisition of stock by one corporation in another or others for the purpose of lessening competition.

The intercorporate stock control of these parallel and normally competing lines of railway, which was further cemented by the consolidation of some of them into the New York Central Railroad Company, with the resulting acquisition by said new company of unlawful controlling interests in the capital stock of the Michigan Central, Big Four, Nickel Plate and other railroads paralleling its own and each other's lines, is fully set forth in paragraphs 5 to 11, inclusive, of the bill (R. 3 to 11), and need not be repeated.

The dismissal of the present bill for want of jurisdiction was based upon the erroneous assumption that, since the amendment of Sec. 5 of the Interstate Commerce Act

on February 28, 1920 (41 Stat. L., 480) so as to give the Interstate Commerce Commission jurisdiction of railroad consolidations, and as touching the grounds for relief reasserted in the present bill, the qualification "without prejudice" annexed to the dismissal of the former suit was but a barren judicial gesture, because the proviso in Section 16 of the Clayton Act (38 Stat. L., 730) now applies alike to the complainant, the defendant and to the subject matter of the present suit, so as to bar its maintenance.

It is enough to point out that this Court in the former case, which was decided Nov. 27, 1922, obviously did not take that view. The view that it did take has already been discussed at the outset of this brief; and it is plain that all the grounds, set forth in the opinion of this Court, for the dismissal of the several parts of the former bill (without prejudice), have now been obviated.

The dismissal of the present bill should be reversed on the authority of *General Investment Co. v. The Lake Shore and Michigan Southern Railway Co., et al.*, 260 U. S., 261, cited *supra*.

Respectfully submitted,

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No. 274.

In the Supreme Court of the United States

OCTOBER TERM, 1925.

GENERAL INVESTMENT COMPANY,
Appellant,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Appellee.

BRIEF OF APPELLEE.

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BRIEF OF APPELLEE.

STATEMENT.

This appeal presents a question of jurisdiction only. The bill avers that prior to December, 1914, The New York Central & Hudson River Railroad Company owned about ninety per cent. of the capital stocks of the Michigan Central and Lake Shore & Michigan Southern Railroads; that the Lake Shore owned a controlling interest in the stocks of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company (Big Four) and the Toledo & Ohio Central Railroad; and the Big Four a like interest in the stock of the Cincinnati Northern Railroad (R. 3, 4). That on December 22, 1914, the New York Central & Hudson River and the Lake Shore, with nine smaller railroads (not including either of the above mentioned other lines), were duly consolidated into The New York Central Railroad Company, defendant herein, the appellant at all times objecting and protesting (R. 2).

It is averred that by virtue of the consolidation, the appellee, the consolidated corporation, on December 22,

1914, acquired, has ever since held and now holds said stocks of the Michigan Central, Big Four and Toledo & Ohio Central, and also controls the majority of the stock of the Cincinnati Northern, through its ownership of the stock of the Big Four. And that it is thus enabled to and does dominate and control the business and property of these railroads (R. 5). Setting out at great length the location of the roads operated by the appellee and the other companies (R. 6-10), the bill avers that the New York Central, Michigan Central and Big Four lines are to a large extent parallel and naturally competing for both interstate and intrastate commerce, as are certain of those belonging to the Big Four and Toledo & Ohio Central (R. 10, 11). It charges that appellee's acquisition on December 22, 1914, and its subsequent holding of the controlling interest in these stocks, with the exercise of the control of said roads resulting therefrom, were and are in violation of the Sherman Act and Clayton Act, as well as of the constitutions and statutes of various states (R. 6, 11-13), and that if this situation is permitted to continue, appellee will be liable to the penalties of such laws and to have its charter forfeited, to the irreparable damage of the appellant and other of its stockholders (R. 14). The appellant then (R. 15, 16) pleads the commencement by it in December, 1914, of a suit to enjoin the consolidation (which, however, was consummated pending such litigation), and the dismissal of that suit; and that whereas the circuit court of appeals ordered it to be dismissed without prejudice in so far as it was based on asserted violations of state laws, this Court ordered its dismissal without prejudice as to those portions charging infractions of federal laws also; from which the remarkable theory is deduced that this suit is "brought pursuant to the leave so especially granted, *sua sponte*, by the Supreme Court of the United States."

The prayer is that such acquisition of the stocks of the Michigan Central, Big Four, and Toledo & Ohio Central, and the resulting control of these lines and of the Cincinnati Northern by the appellee, be held *ultra vires* and void; that appellee be enjoined from continuing such control or voting said stocks, and that it be required to sell and dispose of the same to those who will manage and operate said railroads free from the domination and control of appellee or any of its allied interests (R. 16, 17).

The appellee moved in the district court to dismiss for want of jurisdiction and on other grounds (R. 19, 20), and the motion was sustained, the court certifying that the dismissal was because it was without jurisdiction as a federal court (R. 23, 24).

ARGUMENT.

In *General Investment Co. vs. L. S. & M. S. Ry. Co. et al.*, 260 U. S. 261, which was concluded in November, 1922, plaintiff attempted by injunction to prevent the consolidation of the New York Central & Hudson River Railroad, extending from New York to Buffalo, with the Lake Shore & Michigan Southern Railway, reaching from Buffalo to Chicago, and nine smaller companies, into The New York Central Railroad Company, the present defendant. Neither the Michigan Central, Big Four, Toledo & Ohio Central, nor the Cincinnati Northern, were included in the consolidation. The New York Central & Hudson River which owned the majority of the stock of the Lake Shore, also owned a majority of the Michigan Central stock, and the Lake Shore owned a majority of the stock of the Toledo & Ohio Central and Big Four, which latter in turn owned a controlling interest in the Cincinnati Northern. When the consolidation took place these stocks became the property of the consolidated company, and the control of said com-

panies, which had formerly been exercised either by the New York Central & Hudson River or by the Lake Shore, passed to it with the stocks.

The bill in the present case does not attempt to overturn the consolidation. It treats it as accomplished, and as the effective means by which the appellee acquired the stocks of and thereafter the control over the Michigan Central, Toledo & Ohio Central and Big Four, and through the latter of the Cincinnati Northern. And it is this acquisition, on December 22, 1914, with the subsequent holding of said stocks by appellee and the exercise of control by means thereof, which is the sole basis of complaint. By this means it is alleged, competition has been suppressed and trade restrained.

According to the bill (R. 15, 16) the plaintiff's former suit was dismissed for want of jurisdiction, and this court ordered such dismissal to be without prejudice as to the entire bill. On p. 2 of appellant's brief it is stated:

> "The fact that the suit was brought in a state court was the sole ground of dismissal."

Much is made of this dismissal "without prejudice." It is said to amount to a refusal by this court to hold in the former case, as the district court held in this, that a private suit does not lie for injunctive relief against a common carrier in respect of its illegal acquisition of the stock of another carrier in violation of Sec. 7 of the Clayton Act. And the bill alleges that it constituted leave granted by the court to commence this suit. Both contentions are wrong. As said by Field, J., in *Durant vs. Essex Co.*, 7 Wall., 107, "without prejudice" in a decree of dismissal merely indicates that the merits have not been considered, and that the party may take further legal proceedings on the subject. If the dismissal be of a suit commenced with-

out right in a state court, "without prejudice" is no assurance that it will be entertained when commenced in a federal court; or that a second suit will lie in any court. Especially when as here the second case differs materially from the one dismissed. That the qualification is proper in dismissals for want of jurisdiction see *Gaylord vs Kelshaw*, 1 Wall. 81, and *Hartell vs. Tilghman*, 99 U. S. 547.

THIS PRIVATE SUIT IN SO FAR AS IT IS BASED ON VIOLATIONS OF THE SHERMAN ANTI-TRUST ACT OR CLAYTON ACT CAN NOT BE MAINTAINED.

In *General Investment Co. vs. The L. S. & M. S. Ry. Co. et al., supra*, it is said in the opinion:

> "As respects the Sherman Anti-trust Act as it stood before it was supplemented by the Clayton Act, this court has heretofore determined that the civil remedies specially provided in the act for actual and threatened violations of its provisions were intended to be exclusive, and that those remedies consisted only of (a) suits for injunctions brought by the United States in the public interest under Sec. 4, and (b) private actions to recover damages, brought under Sec. 7. (Citing cases.) The present suit for an injunction, brought by a private corporation in its own interest, was not within those remedies, and so could not be maintained under that act, standing alone.
>
> "That act was supplemented by the Clayton Act, particularly by its 16th section, reading as follows:
>
> " 'That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the Anti-trust Laws, including sections two, three, seven, and eight of this act, when and under the same conditions and principles as injunctive relief against threatened con-

panies, which had formerly been exercised either by the New York Central & Hudson River or by the Lake Shore, passed to it with the stocks.

The bill in the present case does not attempt to overturn the consolidation. It treats it as accomplished, and as the effective means by which the appellee acquired the stocks of and thereafter the control over the Michigan Central, Toledo & Ohio Central and Big Four, and through the latter of the Cincinnati Northern. And it is this acquisition, on December 22, 1914, with the subsequent holding of said stocks by appellee and the exercise of control by means thereof, which is the sole basis of complaint. By this means it is alleged, competition has been suppressed and trade restrained.

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duct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to Regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, * * * in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.'

"This section undoubtedly enlarges the remedies provided in the Sherman Anti-trust Act to the extent of enabling persons and corporations threatened with loss or damage through violations of that act to maintain suits to enjoin such violations, save in the instances specified in the proviso."

As the defendant is a common carrier subject to the Act to Regulate Commerce and this is a private suit in equity for injunctive relief, the court below had no jurisdiction if the suit is "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission." It is perfectly clear that it is.

Section 7 of the Clayton Act (38 Stat. L. 731) provides:

"Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any sec-

tion or community, or tend to create a monopoly of any line of commerce.

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

* * *

The bill charges the defendant with very specific and definite violations of these provisions. After setting out one of the terms of the consolidation agreement, it avers (R. 5):

"By virtue of said agreement and pursuant thereto, the defendant, New York Central Railroad Company, acquired, on December 22nd, 1914, has ever since held and now holds the $30,207,700 of the capital stock of the Big Four Company, $9,547,700 of the capital stock of the Ohio Central Company, and which, prior to said date, had been held by said Lake Shore Company, and also, through its control of the Big Four Company, controls $1,707,400 of the capital stock of the Cincinnati Northern Company, and said defendant, on said date, also acquired, pursuant to said agreement, has ever since held and now holds, the $16,819,300 of the capital stock of the Michigan Central Company, which, prior to December 22nd, 1914, had been held by the New York Central & Hudson River Railroad Company."

Charging that "by reason of such ownership of a majority of the capital stocks of the several companies," the defendant dominates and for nearly ten years has dominated and controlled their affairs, the bill proceeds (R. 6):

"The acquisition by the New York Central Railroad Company, in December, 1914, and its continued holding of the controlling interest in the capital stock of the Big Four Company, to-wit: $30,207,700 of the common capital stock, and the acquisition by the said New York Central Company, in December, 1914, of $16,819,300, the same being about 90 per cent of the outstanding capital stock of the Michigan Central Railroad Company, and the continued holding thereof, and the acquisition by said defendant, New York Central Company, in December, 1914, of $9,547,700—a controlling interest—of the capital stock of the Toledo and Ohio Central Railway Company and the continued holding thereof and the continued exercise of control and domination of said Big Four Company, the Michigan Central Company and the Ohio Central Company were and are in violation of the Federal Anti-Trust Acts, commonly known and referred to as the Sherman Act and the Clayton Act; and the same also were and are in violation of the constitutions and statutes of the States of Pennsylvania, Ohio, Illinois, Indiana and Michigan."

It further alleges that the lines of the defendant, the Michigan Central, the Big Four and the Toledo & Ohio Central are to a large extent parallel and naturally competing for both interstate and intrastate commerce, and that the acquisition by the defendant of the controlling interest in the capital stocks which is complained of suppresses such competition, renders its charter subject to forfeiture and subjects it to the penalties of the Sherman Act and Clayton Act, etc.

The foregoing averments, with others not necessary to refer to, certainly set up a claimed violation of section 7 of the Clayton Act, and present a matter subject to the regulation, supervision or other jurisdiction of the Interstate Commerce Commission.

For it is provided by section 11 of that act:

"Sec. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

"Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be,

in the manner and within the time fixed by said order."

The section further provides that the commission may apply to the circuit court of appeals for the enforcement of its order, and for the proceedings to be taken upon such application; that the judgment and decree of the court shall be final, but subject to review by this Court upon certiorari; and that the party against whom the order is made by the commission may have it reviewed in the circuit court of appeals, whose jurisdiction to enforce, set aside or modify such orders shall be exclusive.

The bill is framed on the theory that the consolidated corporation was capable at its inception of violating the Act, and that its acquisition of the stocks with the resulting control of the Michigan Central, Big Four and Toledo & Ohio Central did violate it. No claim is or can be made, as was done in *Aluminum Company of America vs. Federal Trade Commission*, 284 Fed. 401, that because of the fact that when the stocks were acquired one of the parties to the transaction was not engaged in commerce, the provisions of section 7 could not apply. In the dissenting opinion that view was followed, but the contrary decision of the majority met the approval of this Court, which denied a petition for certiorari, 261 U. S. 616. The bill also charges the violation of the second clause of section 7, alleging a lessening of competition between the companies whose stocks were acquired; and in such a case the offending corporation is not required to be engaged in commerce. Nor does appellant contend that defendant's acquisition of the stocks through the consolidation is not such acquisition, direct or indirect, as is mentioned in the first clause of the section.

On the appellant's averments section 7 of the Clayton Act was violated and therefore, as to this private

litigant, the Interstate Commerce Commission had sole original jurisdiction of the matter, and the only power of the courts is revisory or in aid of orders of that tribunal.

For a case analogous in some respects see *U. S. vs. Southern Pacific,* 290 Fed. 443. This Court held in *U. S. vs. Southern Pacific Co., et al.,* 259 U. S. 214, that the acquisition of the control of the Central Pacific by the Southern Pacific was illegal under the Sherman Act. Thereafter the Interstate Commerce Commission, acting under section 5, par. (2) of the Act to Regulate Commerce as amended by Transportation Act 1920, authorized such control, and in the above cited case its action was approved. It is a striking example of the exercise by the Commission of the sort of jurisdiction mentioned in the proviso of section 16.

THE FEDERAL REMEDY PROVIDED BY THE CLAYTON ACT IS EXCLUSIVE, AND THE DISTRICT COURT WAS WITHOUT JURISDICTION OF ALLEGED VIOLATIONS OF STATE CONSTITUTIONS AND LAWS.

Section 1 of the Clayton Act defines the term "commerce," as used in the Act to mean trade or commerce among the several states and with foreign nations, etc., not including commerce wholly within a single state. And it is the suppression of such commerce with which section 7 of the Act deals. The authority of the commission under section 11 to enforce compliance with section 7 by an order requiring one carrier to divest itself of the stock of another is limited, so far as express language is concerned, to cases involving commerce as so defined. Nevertheless the subject is of such a nature that where it appears that the acquisition of the stock and resulting control of one interstate carrier by another not only violates the Federal Anti-trust Acts by lessening competition in

interstate commerce, but also transgresses state constitutions and laws designed to protect intrastate commerce; the federal remedy is and must be exclusive.

The state laws and constitutions which are pleaded in the bill forbid the same things denounced by the federal laws; that is, combinations in restraint of trade, suppression of competition through control of parallel and competing lines, and monopolization of traffic. And the remedy invoked by the appellant for the violation of such state laws is precisely the remedy provided by section 11 of the Clayton Act, to-wit, the enforced disposition by the appellee of its Michigan Central, Big Four and Toledo & Ohio Central stocks. Whether such relief be secured by order of the commission or by decree of a court, and whether to protect interstate or intrastate commerce, once granted it will be effective as to both classes of commerce, and put an end to violations of federal as well as state laws. If The New York Central Railroad Company disposes of the stocks about which complaint is made and surrenders control of these companies, it will do so for every purpose. Neither a decree of a court nor an order of the commission under section 11 of the Clayton Act can be limited in its effect to the vindication of state laws alone, or of federal laws alone. The situation is very different from that in *State of Texas vs. Eastern Texas R. Co.*, 258 U. S. 204, where, dealing with the abandonment of a railroad entirely within the state, used only by a corporation of that state, and not a part of any other line, and whose local operation would neither burden nor affect interstate commerce, this Court held that the power of the Interstate Commerce Commission to authorize abandonment of railroads conferred by Transportation Act 1920 did not include the power to authorize the discontinuance of the intrastate operations of that par-

ticular road. Under the peculiar facts of that case, abandonment of interstate operations could be entirely separated from abandonment of intrastate operations. In the case at bar the bill avers that the acquisition of the stocks and of the control complained of had precisely the same effect upon intrastate commerce and interstate commerce, in that it lessened competition in both. And it is apparent that there can be no separation of the result of the disposition by the defendant of such stocks and control as between the two classes of commerce; both will necessarily be affected in the same manner and to the same degree. So that an order issued by the commission under section 11 of the Clayton Act requiring such disposition to protect interstate traffic must necessarily, though incidentally, affect intrastate traffic as well.

In such a case where Congress has entered the field by legislating against a wrong and prescribing a remedy, such remedy is exclusive of all others, and such legislation supersedes the provisions of state constitutions or laws so far as is necessary to make the federal law effective.

Houston East and West R. R. Co. vs. United States, 234 U. S. 342;

Interstate Commerce Commission vs. Goodrich Tire Co., 224 U. S. 194;

Southern R. R. Co. vs. R. R. Com., of Indiana, 236 U. S. 439;

Railroad Co. vs. Rigsby, 241 U. S. 233;

Railroad Com. of Wisconsin vs. C. B. & Q. R. R. Co., 257 U. S. 563;

New York vs. U. S., 257 U. S. 591.

If this be not true, then it is possible in practically every case involving control of one carrier by another

to thwart the will of Congress and deprive the Interstate Commerce Commission of its jurisdiction under the Clayton Act by joining with a charge of the violation of federal laws, a claim of infraction of like state laws, as is done in this bill. A case can be conceived where one carrier secures the control of another for the sole purpose and with the sole effect of lessening competition in intrastate traffic only, and where state laws only would apply; but this is not such a case.

The fact that in the former case, 260 U. S. 261, this Court considered the sufficiency of that part of the bill which charged violations of state laws, and thus in a way exercised jurisdiction, is of no consequence. For it is to be remembered that that case was brought to enjoin the proposed consolidation (see appellant's statement of the purpose of its former suit, R. 15), and when it was filed in 1914 the Interstate Commerce Commission had not been given jurisdiction over consolidations of railroads, which has since been conferred upon it. There was no federal remedy and of course no exclusive remedy to be administered by the commission for the prevention of improper consolidations. While the federal remedy under section 11 of the Clayton Act which we now invoke was then available, the case which the appellant made did not call for its application. Appellant was then complaining of a threatened future consolidation and not of the completed violation of section 7 by an acquisition of stocks which had already taken place.

As to such executed transaction affecting both interstate and intrastate commerce, the federal law necessarily supersedes state laws and constitutions, the federal remedy is exclusive, and a private suit charging such transaction to be a violation of state law does not lie, even in a court of the United States.

Cases such as *Brushaber vs. Union Pacific R. R. Co.*, 240 U. S. 1, and *Stanton vs. Baltic Mining Co.*, 240 U. S. 103, cited in appellant's brief have no application. It was there held that a suit by a stockholder to restrain his corporation from paying an unconstitutional tax did not violate the prohibitions of Sec. 3224 R. S. against enjoining the enforcement of taxes. And that such a stockholder's suit was not a proceeding to prevent the government from assessing and collecting the tax, which was the sort of proceeding prohibited by Sec. 3224. The appellant bases its right to sue in the instant case on the provisions of section 16 of the Clayton Act, and can not claim that the suit is not one contemplated by that section. As a matter of fact, it comes strictly within the section, being a suit for injunctive relief against threatened loss by violation of the anti-trust laws, including section 7 of the Act. But if it is not such a case, then it is filed without any pretense of authority, for it is only under this section that such private suits will in some instances lie. *General Investment Co. vs. L. S. & M. S. Ry. Co., supra.*

That the district court was without jurisdiction of any feature of the case made by the bill, and that its judgment should be affirmed, is

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 274.—October Term, 1925.

General Investment Company, Appellant, *vs.* The New York Central Railroad Company.	Appeal from the District Court of the United States for the Northern District of Ohio.

[May 24, 1926.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This is a suit in equity brought by a minority stockholder against the New York Central Railroad Company to enjoin it from dominating and controlling, through stock ownership, certain other railroad companies. There are various prayers in the bill, but all make for the attainment of the object just stated.

The suit was begun in the District Court of the United States for the Northern District of Ohio June 20, 1924. Federal jurisdiction was invoked on the grounds that the parties are citizens of different States—the plaintiff a Maine corporation and the defendant a corporation of Ohio and States other than Maine—and that the suit is one arising under the laws of the United States—there being also a showing that the value involved is adequate.

Shortly described, the bill charges that the defendant was organized pursuant to a consolidation agreement between the New York Central & Hudson River Railroad Company, the Lake Shore & Michigan Southern Railway Company and nine companies subsidiary to them; that the agreement was made in April, 1914, and carried into effect the following December; that thereby the defendant, besides acquiring the railroad lines of the immediate parties to the agreement, became invested with large amounts of stock in other railroad companies, including the Michigan Central and Big Four, and was thus enabled to dominate and control them and their subsidiaries; that these other companies have railroad lines

which are operated in both interstate and intrastate commerce, and many of their lines are parallel and normally and potentially competing; that during the ten years since the agreement became effective the defendant through its ownership of stock in these other companies has dominated and controlled and is now dominating and controlling their properties and business; and that this stock ownership, domination and control is in violation of the Sherman Anti-trust Act, c. 647, 26 Stat. 209, of the Clayton Act, c. 323, 38 Stat. 730, and of the laws of Ohio and other States, wherein the railroads lie, forbidding a common control, through stock ownership or otherwise, of parellel or competing railroads.

The defendant moved to dismiss the bill on various grounds, and the court after a hearing on the motion entered a decree of dismissal. Afterwards and in due time the court granted a certificate stating that the dismissal was for want of jurisdiction of the subject matter and allowed a direct appeal to this Court under section 238 of the Judicial Code, which at that time permitted such an appeal where the jurisdiction of the District Court was in issue, but required the jurisdictional question to be certified and limited the review to the ruling on that question.

In the bill, as we have shown, the plaintiff attempts with much detail to set forth a continuing violation of the Sherman Anti-trust Act and the Clayton Act, asserts that this violation unless restrained will be injurious to the plaintiff and other stockholders and prays for relief by injunction. Such a suit is essentially one arising under the laws of the United States, and, as the requisite value is involved, is one of which the District Courts are given jurisdiction. By jurisdiction we mean power to entertain the suit, consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought. There may be jurisdiction and yet an absence of merits (*The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25; *Geneva Furniture Co.* v. *Karpen*, 238 U. S. 254, 258), as where the plaintiff seeks preventive relief against a threatened violation of law of which he has no right to complain, either because it will not injure him or because the right to invoke such relief is lodged exclusively in an agency charged with the duty of representing the public in the matter. Whether a plaintiff seeking such relief has the requisite standing is a question going to

the merits, and its determination is an exercise of jurisdiction. *Illinois Central R. R. Co.* v. *Adams*, 180 U. S. 28, 34; *Venner* v. *Great Northern Ry. Co.*, 209 U. S. 24, 34. If it be resolved against him, the appropriate decree is a dismissal for want of merits, not for want of jurisdiction.

A week or two before entering the decree of dismissal the court considered the motion to dismiss in a carefully prepared memorandum found in the record. What was said in it shows that the court was then of opinion, first, that in view of sections 4 and 7 of the Sherman Anti-trust Act, of sections 7, 8, 11 and 16 of the Clayton Act, and of section 5(2) of the Interstate Commerce Act as amended by section 407 of the Transportation Act, c. 91, 41 Stat. 480, the plaintiff, as a private litigant, was without capacity or right to maintain the bill in respect of the alleged restraint of interstate commerce, because the right to maintain such a bill against railroad carriers was lodged exclusively in others who are charged with guarding the public interest, and, secondly, that the interstate and intrastate business of the carriers affected are so inextricably interwoven that it would be impossible to award any relief reaching their intrastate business without equally affecting their interstate business, and therefore to permit the plaintiff to maintain the bill in respect of the alleged violation of state laws would be indirectly permitting a private litigant to do what in effect is prohibited by federal law.

The questions considered in the memorandum pertain to the merits, not to jurisdiction; and if the memorandum were definitive of the grounds on which the court proceeded we should regard the bill as dismissed on the merits. But as the decree was entered a week or two later and the court expressly certified that the dismissal was for want of jurisdiction of the subject matter, we have given effect to the certificate and have examined the question certified. Our conclusion is that the court had jurisdiction of the subject matter and therefore that the decree of dismissal was put on an untenable ground.

Decree reversed.

Mr. Justice SUTHERLAND did not participate in the consideration or decision of this case.